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PATENT APPLICATION

ATTORNEY DOCKET NO. _____10007689-1_____

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s):   Shell S. Simpson et al.

Confirmation No.: 5729

Application No.: 09/941,038

Examiner: T. Lamb

Filing Date: August 27, 2001

Group Art Unit: 2622

Title: PRIVATE PRINTING USING NETWORK-BASED IMAGING

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on ____April 17, 2007____ .

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐(a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month $120   ☐ 2nd Month $450   ☐ 3rd Month $1020   ☐ 4th Month $1590

☐ The extension fee has already been filed in this application.

☒(b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of ___$ 500___ . At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Signature:

Respectfully submitted,

Shell S. Simpson et al.

By_____

Walter W. Karnstein

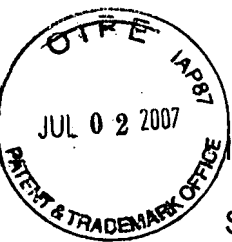Attorney/Agent for Applicant(s)

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Rev 10/05 (AplBrief)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

SHELL S. SIMPSON, WARD S. FOSTER
and KRIS R. LIVINGSTON

Serial No.　:　09/941,038

Filed　:　August 27, 2001

For　:　PRIVATE PRINTING USING NETWORK-BASED IMAGING

Dated: June 18, 2007

HP Docket No. 10007689-1

Examiner T. Lamb

Group Art Unit 2625

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

S i r :

BRIEF OF APPELLANTS

This brief is presented in opposition to the Examiner's rejection of claims

10-17 and 22-27 in the Office action dated February 2, 2007.

I.　REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, LP,

a limited partnership established under the laws of the State of Texas and having

a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A.

(hereinafter "HPCD").　HPCD is a Texas partnership and is a wholly-owned

affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in

Palo Alto, CA.　The general or managing partner of HPCD is HPQ holdings, LLC.

II.　RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

III. STATUS OF CLAIMS

The present application was filed on August 27, 2001, with original claims 1-27. A first Office action was mailed April 7, 2005. Applicants amended claim 7 in their June 27, 2005 response to the first Office action. A second Office action was mailed on September 22, 2005. Appellants did not amend the claims in their response sent on December 22, 2005, instead overcoming the reference cited by the Examiner with a declaration. A third Office action was sent on March 13, 2006, indicating that claims 10-17 and 22-27 were in condition for allowance. Appellants responded on June 13, 2006, by canceling claims 1-9 and 18-21. A fourth Office action was mailed on August 23, 2006. On November 24, 2006, Applicants responded with remarks and by amending claim 17. A fifth Office action was mailed on February 2, 2007.

Pending claims 10-17 and 22-27 are the claims at issue in this appeal.

IV. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Office action dated February 2, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is set forth in exemplary embodiments, which are shown and described in the application as originally filed. Particular locations in the specification and drawings are cited below in support of such claimed subject matter.

The claims at issue in this appeal are directed towards private printing wherein a printer receives the identity of the user along with the print request, so that the printer may wait to print the document until the user is within close proximity of the printer.

In particular, independent claim 10 recites a method of private printing, an example of which is shown in Fig. 9 and described on page 20, line 13 – page 21, line 3. The exemplary method includes receiving (468) at a web service representing a printer a request to print a document and the identity of the user making the request, automatically detecting (470) when the user is in close proximity to the printer, and printing (472) the document after detecting the user.

Independent claim 22 recites a system for private printing, an example of which is shown in Fig. 2 (reproduced below) and described on page 5, line 7 – page 9, line 10. In particular, the exemplary system includes a network service (network-based print server 166 executing on server 156) representing a printer (174); a client computing device (152) configured to, execute a network browser (160) via which content representing a printer can be displayed to allow a user of the client computing device (152) to request a document to be printed at the printer (174), automatically detect an identity of the user (using, e.g., identity sensor 163), communicate the print request and the identity of the user to the network service (network-based print server 166); and wherein the network service (network-based print server 166) is configured to receive the print request and the identity of the user, automatically detect when the user is in close

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physical proximity to the printer (using, e.g., proximity sensor 176) by identifying

the identity of the user being located on a device (e.g., smart card or magnetic

card which broadcasts a signal with a particular range) within a range of a

proximity sensor (176) at the network service (166), and waiting to print the

requested document until the user has been detected in close physical proximity

to the printer (174).
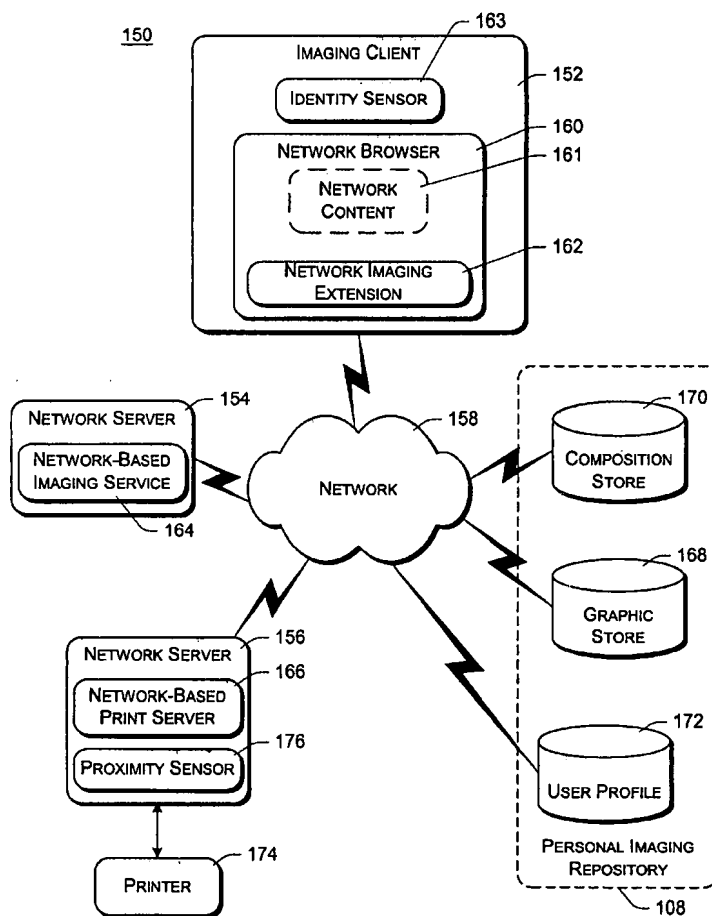
Fig. 2

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Are claims 10, 13-16, 22 and 24-27 properly rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,862,583 to Mazzagatte et al. (Mazzagatte)?

B. Is claim 11 properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Mazzagatte in view of U.S. Patent No. 6,857,568 to Fergen et al. (Fergen)?

C. Are claims 12 and 23 properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Mazzagatte in view of U.S. Patent No. 7,073,119 to Matsubayashi et al. (Matsubayashi)?

D. Is claim 17 properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Mazzagatte in view of U.S. Patent No. 6,285,889 to Nykänen et al. (Nykänen)?

VII. ARGUMENT

Appellants assert that the Examiner has failed to establish that Mazzagatte anticipates claims 10, 13-16, 22 and 24-27, and thus that the rejections under 35 U.S.C. § 102(e) are improper. Appellants also assert that Examiner has failed to establish prima facie obviousness of claims 11, 12, 17 and 23, and thus that the rejections under 35 U.S.C. § 103(a) are improper.

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A. <u>Rejections under 35 U.S.C. § 102(e)</u>

The Examiner rejected claims 10, 13-16, 22 and 24-27 under 35 U.S.C. §
102(e) in view of Mazzagatte. Section 102(e) provides the following:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under
> section 122(b), by another filed in the United States before the invention by the
> applicant for patent or (2) a patent granted on an application for patent by
> another filed in the United States before the invention by the applicant for patent,
> except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for the purposes of this subsection of an application
> filed in the United States only if the international application designated the
> United States and was published under Article 21(2) of such treaty in the English
> language.

A claim is anticipated only "if every limitation in a claim is found in a single
prior art reference." <u>Nystrom v. Trex Co.</u>, 374 F.3d 1105, 1117, 71 USPQ2d
1241 (Fed. Cir. 2004); <u>Merck & Co. v. Teva Pharmaceuticals USA, Inc.</u>, 347 F.3d
1367, 1372, 68 USPQ2d 185 (Fed. Cir. 2003) ("An 'anticipating' reference must
describe all of the elements and limitations of the claim in a single reference, and
enable one of skill in the field of the invention to make and use the claimed
invention").

In the present application, Mazzagatte fails to disclose elements recited in
independent claims 10 and 22. Therefore, Mazzagatte cannot anticipate claims
10 and 22. Additionally, Mazzagatte fails to disclose features added by
dependent claims 26 and 27. Last, as claims 13-16 and 24-25 depend on claims
10 or 22, these claims are also not anticipated.

i.   The Mazzagatte Patent

Mazzagatte relates to authenticated secure printing using encryption. Fig. 1 (reproduced below) shows components of the Mazzagatte device:
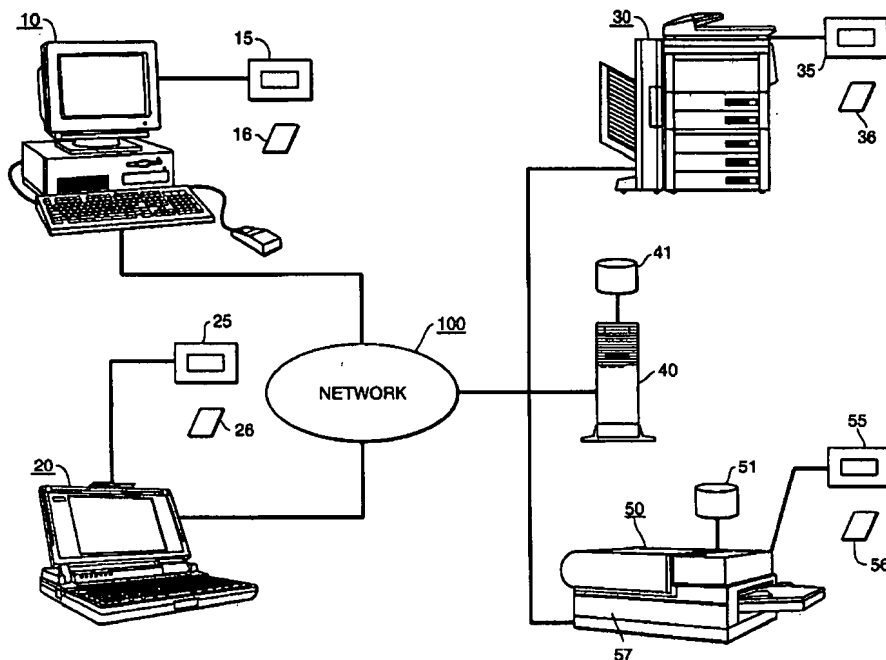
The device of Mazzagatte includes a printer 50 having a smart-card interface device 55. A hard-copy printout submitted to printer 50 is not printed until the intended recipient arrives at the printer and is properly authenticated. Such authentication may be accomplished using various methods, such as a user inserting his/her smart-card 56 into the smart-card interface device 55. (Mazzagatte col. 9, lines 46-55).   Other means of performing authentication include the intended recipient entering a personal identification number from a keypad or touch display device located at the printer. (Mazzagatte col. 10, lines 1-12).

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ii. Claim Rejections

As noted above, claims 10, 13-16, 22 and 24-27 have been rejected under 35 U.S.C. § 102(e) as being unpatentable in view of Mazzagatte. Applicants respectfully traverse the rejections.

a. Claim 10

Appellants contend that Mazzagatte fails to disclose at least one element recited in independent claim 10. In particular, the Examiner cites col. 9, lines 45-55 as disclosing automatically detecting when the user is in close physical proximity to the printer. Appellants have reviewed the cited passage, and the rest of Mazzagatte, and respectfully disagree with the Examiner's characterization.

While some of the authentication methods described in Mazzagatte may involve actions at the printer, the methods do not involve detecting presence of the user, much less the printer <u>automatically</u> detecting the close physical proximity of the user to the printer (such as by proximity sensor 176 in the present application). As described by Mazzagatte, the user must deliberately act to effect printing, either by inserting a smart-card into the smart-card interface device, or by inputting an identification number or password at the printer. For at least this reason, Appellants contend that the rejection of independent claim 10 is improper, and that claim 10 should be allowed.

b. Claim 22

Appellants contend that Mazzagatte fails to disclose at least one element recited in independent claim 22.

First, as discussed above, Mazzagatte does not disclose automatically detecting when the user is in close physical proximity to the printer. At best, Mazzagatte discloses a user deliberately swiping a smart-card or inputting a personal identification number at the printer.

Second, Mazzagatte does not disclose a network browser via which content representing a printer can be displayed to allow a user of the client computing device to request a document to be printed at the printer. In rejecting claim 22, the Examiner cites col. 7, lines 46-56 of Mazzagatte as disclosing such a network browser. Appellants respectfully disagree. Mazzagatte discloses a printer driver executing on a client computing device, allowing a user to select printing options. This is not a network browser via which content representing a printer can be displayed on a client computer device. Accordingly, Mazzagatte does not disclose a user of a client computing device requesting that a document be printed at a particular printer using such a browser.

For at least these reasons, the rejection of claim 22 is improper, and claim 22 should be allowed.

c.   <u>Claims 13-16 and 24-27</u>

Regardless of whether the additional features recited in claims 13-16 are found in Mazzagatte, these claims depend from claim 10, and thus include all of the features recited in claim 10. Similarly, claims 24-27 depend from claim 22, and thus include all of the features of claim 22. Since claims 10 and 22 have been shown to be allowable, claims 13-16 and 24-27 should also be allowed for at least the same reasons.

d.   <u>Claim 26</u>

In addition to the foregoing, Appellants contend that Mazzagatte fails to disclose at least one element directly recited in claim 26. Claim 26 recites automatically detecting the identity of the user by querying an operating system of the client computing device for the identity. As recited by claim 22, from which claim 26 depends, it is the client computing device that is configured to automatically detect the identity of the user. Thus, in claim 26, the client computing device queries its own operating system for the identity of the user.

Mazzagatte does not disclose a client computing device that queries its own operating system for the identity of the user. The Examiner points to the smart-card 56. Smart card 56 is "a mechanism whereby a computer user can authenticate the user's identity to desktop computer 10." Mazzagatte Col. 4, lines 6-8. As is made clear by the actual language of Mazzagatte, it is the smart card attached to the client computer device, not the client computer device's operating system, which the client computer device queries for the identity of the user.

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For at least this reason, in addition to being depending on claim 22, the rejection of claim 26 should be withdrawn, and claim 26 should be allowed.

e. Claim 27

Claim 27 expressly recites "using a proximity sensor that is part of the client computing device to identify the user identification from a device worn by the user." The Examiner states that Mazzagatte discloses corresponding structure in the form of smart-card 16 (col. 4, lines 4-12 of Mazzagatte). Appellants respectfully disagree.

Smart-card 16 and smart-card interface 15 (attached to a desktop computer 10), are not a proximity sensor used to identify the user. Similarly, smart card 16 is not a device worn by a user from which a proximity sensor may identify the user. For at least these additional reasons, in addition to depending on claim 22, the rejection of claim 27 is inappropriate, and claim 27 should be allowed.

iii. Summary

Appellants assert that the Examiner has not adequately shown anticipation of claims 10, 13-16, 22 and 24-27. Mazzagatte does not teach the automatic detection of when a user is in close physical proximity to a printer, as recited by claims 10 and 22. Mazzagatte also does not disclose executing a network browser on a client computer device via which content representing a printer can be displayed to allow a user of the client computing device to request a document to be printed at the printer, as recited by claim 22. Mazzagatte does

not disclose querying an operating system of the client computing device for the identity of the user, as recited by claim 26. Finally, Mazzagatte does not disclose using a proximity sensor that is part of the client computing device to identify the user identification from a device worn by the user, as recited by claim 27. Accordingly, the rejections of claims 10, 22, 26 and 27 under 35 U.S.C. § 102(e) based on Mazzagatte are improper, and such claims should be allowed. Furthermore, because claims 13-16 and 23-27 depend from claims 10 or 22, the rejections of these claims under 35 U.S.C. § 102(e) based on Mazzagatte also is improper, and these claims also should be allowed.

B. Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 11, 12, 17 and 23 under 35 USC § 103(a) over Mazzagatte in view of various references (Fergen, Matsubayashi and Nykänen). Appellants respectfully traverse these rejections.

i. Prima facie *obviousness*

The requirements for a *prima facie* case of obviousness are set out in MPEP § 2143:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.
>
> The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As recently stated by the Supreme Court, "[t]he obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion and motivation." KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007). Nonetheless, it will often be necessary "to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art" to find a reason to combine multiple references. Id. at 1740-1741. "To facilitate review, this analysis should be made explicit." Id.

In the present application, the Examiner combines Mazzagatte with various references to facilitate the obviousness rejections of claims 11, 12, 17 and 23. However, in each case, the Examiner's combinations fail to teach or suggest elements recited in the respective claims. Because a rejection under 35 U.S.C. § 103 requires that all elements of the claim at issue be taught or suggested by the cited prior art references, see CFMT, Inc. v. YieldUp Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)("obviousness requires a suggestion of all limitations in a claim"), the Examiner's rejections here are inappropriate, and should be withdrawn.

ii.   Fergen Patent

Fergen is directed towards a terminal for libraries which both checks out and checks in circulating items. The terminal may integrate a security marker reader, a printer, and a controller in the same housing, and processes financial transactions related to the borrowing of circulating items. (Fergen abstract). In one embodiment, the terminal includes a proximity sensor that may be used to detect when a library patron has approached the self-service library terminal. (Fergen col. 6, lines 38-40).

iii.   Matsubayashi Patent

Matsubayashi is directed to a method for providing print-by-reference functionality by providing a web page to a web browser, receiving a URL entered into the provided web page, retrieving a printable document corresponding to the URL, and printing the retrieved document. Notably, the web page may be provided by a web server embedded in a printer. (Matsubayashi abstract).

iv.   Nykänen Patent

Nykänen describes various methods of utilizing an application and output device-independent data transfer format to enable printing from portable terminal devices. In particular, Nykänen describes printing from portable terminal devices, such as personal digital assistants, cellular telephones, or laptop computers, whereby the terminal device converts the image data into a data transfer format independent of any application, using a format generator. The converted data is then sent to another fixed device, e.g., a computer on a local

area network, and the fixed device decodes the data into a form suitable for output devices, e.g. printers or plotters. The fixed device then automatically transfers the decoded data to the output device for outputting. (Nykänen abstract).

v. Claim Rejections

As noted above, the Examiner rejected claims 11, 12, 17 and 23 under 35 USC § 103(a) over Mazzagatte in view of the various references specified above. Appellants submit that in every instance, the combination of Mazzagatte with the cited reference fails to disclose or suggest features recited in the respective claim.

a. Claim 11

Appellants contend that the combination of Mazzagatte and Fergen fails to disclose at least one feature recited in claim 11. Claim 11 recites a method as recited in claim 10, wherein automatically detecting when the user is in close physical proximity to the printer comprises detecting when the user is within a threshold distance of the printer, wherein the threshold distance is no greater than a range of a proximity sensor that is part of the printer.

The Examiner concedes that Mazzagatte fails to teach this feature. However, the Examiner then asserts that Fergen teaches this feature in Col.6, lines 38-40. Appellants respectfully disagree.

Fergen describes a "proximity sensor 38 [that] may be used to detect when a library patron has approached the self-service library terminal 10." As

clearly stated in its specification, Fergen discloses a proximity sensor that may be used to detect when any library patron is nearby. In contrast, claim 11 recites detecting when a particular printer user is within a threshold distance of the printer, as evidenced by the definitive use of "the user." Thus, Fergen fails to disclose a feature of claim 11.

The Office action also fails to cite any motivation to combine Mazzagatte with Fergen. Although the Supreme Court reiterated in KSR v. Teleflex that the motivation to combine multiple references may be found outside the references themselves, "[t]o facilitate review, this analysis should be made explicit." KSR at 1741. The Examiner has not provided any analysis in this regard, and would seem unable to do so in view of the non-analogous nature of the library terminals disclosed in Fergen.

For at least these reasons, Appellants respectfully assert that the rejection of claim 11 is improper, and that claim 11 should be allowed.

b. Claims 12, 23 and 17

Appellants believe that the combination of Mazzagatte and Matsubayashi fails to disclose at least one feature recited in claims 12 and 23. Claim 12 recites a method as recited in claim 10, wherein the web service is embedded in the printer. Claim 23 adds a similar feature to claim 22. Appellants also believe that the combination of Mazzagatte and Nykänen fails to disclose at least one feature recited in claim 17. Claim 17 adds the features of receiving the identification of

the user from a client computing device being used by the user, and wherein no printer driver for the printer is installed on the client computing device.

As stated above regarding claims 10 and 22, from which claims 12, 17 and 23 depend, Mazzagatte fails to disclose automatically detecting when the user is in close physical proximity to the printer. As further discussed above regarding claim 22, Mazzagatte does not disclose a client computing device configured to execute a network browser via which content representing a printer can be displayed to allow a user of the client computing device to request a document to be printed at the printer. Matsubayashi and Nykänen fail to address these missing features. Therefore, regardless of whether Matsubayashi discloses the additional features recited in claims 12 and 23, the combination of Matsubayashi and Mazzagatte cannot render claims 12 and 23 obvious because the combination lacks necessary features of the underlying independent claims. Similarly, regardless of whether Nykänen discloses the additional limitations recited in claim 17, the combination of Nykänen and Mazzagatte cannot render claim 17 obvious because the combination lacks necessary elements of underlying claim 10. For at least these reasons, the rejection of claims 12, 17 and 23 is improper, and these claims should be allowed.

vi. <u>Summary</u>

Appellants assert that the Examiner has not satisfied the burden of showing *prima facie* obviousness in all the rejections under 35 U.S.C. § 103(a). The combination of Mazzagatte and Fergen fails to disclose detecting when the user is within a threshold distance of the printer, wherein the threshold distance is no greater than a range of a proximity sensor that is part of the printer, as set forth in claim 11. The combination of Mazzagatte with Matsubayashi fails to disclose all features recited in claims 12 or 23. Similarly, the combination of Mazzagatte and Nykänen does not disclose the features recited in claim 17. Accordingly, the rejections of claims 11, 12, 17 and 23 are improper, and such claims should be allowed.

VIII. CLAIMS APPENDIX

10.   A method comprising:

receiving, at a web service representing a printer, a request to print a document;

receiving, at the web service, an identification of the user;

automatically detecting when the user is in close physical proximity to the printer; and

waiting to print the document until the user is in close physical proximity to the printer.

11.   A method as recited in claim 10, wherein automatically detecting when the user is in close physical proximity to the printer comprises detecting when the user is within a threshold distance of the printer, wherein the threshold distance is no greater than a range of a proximity sensor that is part of the printer.

12.   A method as recited in claim 10, wherein the web service is embedded in the printer.

13.   A method as recited in claim 10, wherein the web service is included in a proxy coupled to the printer.

14.   A method as recited in claim 10, wherein waiting to print the document further comprises waiting to print the document until the user has selected a particular one or more buttons on the printer.

15. A method as recited in claim 10, wherein waiting to print the document further comprises waiting to print the document until the user has entered a particular personal identification number (PIN) at the printer.

16. A method as recited in claim 15, wherein the web service receives the PIN from the same computing device as the request to print the document is received from.

17. A method as recited in claim 10, wherein receiving an identification of the user comprises receiving the identification of the user from a client computing device being used by the user, and wherein no printer driver for the printer is installed on the client computing device.

22. A system comprising:

a network service representing a printer;

a client computing device configured to,

execute a network browser via which content representing a printer can be displayed to allow a user of the client computing device to request a document to be printed at the printer,

automatically detect an identity of the user,

communicate the print request and the identity of the user to the network service; and

wherein the network service is configured to,

receive the print request and the identity of the user,

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automatically detect when the user is in close physical proximity to the printer by identifying the identity of the user being located on a device within a range of a proximity sensor at the network service, and

waiting to print the requested document until the user has been detected in close physical proximity to the printer.

23.   A system as recited in claim 22, wherein the network service is embedded in the printer.

24.   A system as recited in claim 22, wherein the network service is embedded in a proxy server coupled to the printer.

25.   A system as recited in claim 22, wherein the content representing the printer can be displayed to allow a user of the client computing device to enable a private printing option along with the request for the document to be printed.

26.   A system as recited in claim 22, wherein automatically detecting the identity of the user comprises querying an operating system of the client computing device for the identity.

27.   A system as recited in claim 22, wherein automatically detecting the identity of the user comprises using a proximity sensor that is part of the client computing device to identify the user identification from a device worn by the user.

IX.   <u>EVIDENCE APPENDIX</u>

None.

X. RELATED PROCEEDINGS APPENDIX

None.

Respectfully submitted,

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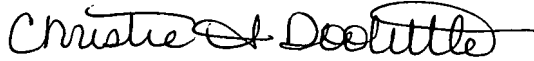Portland, Oregon 97204
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on June 18, 2007.

Christie A. Doolittle

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